APPEAL NO. 031074
FILED JUNE 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 10, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third and fourth quarters; that the respondent (carrier) is relieved of liability for SIBs from September 12 through September 25, 2002, because of the claimant's failure to timely file his Application for [SIBs] (TWCC-52) for the third quarter; that the carrier is relieved of liability for SIBs from December 12 through December 16, 2002, because of the claimant's failure to timely file his TWCC-52 for the fourth quarter; and that the compensable injury sustained on _____, does not extend to include an injury to the left wrist. The claimant appeals each of the determinations on sufficiency of the evidence grounds. The carrier responds, urging affirmance, and asserting that the claimant appealed findings that were resolved by stipulation.

DECISION

Affirmed.

The parties stipulated that the claimant did not file his TWCC-52 for the third quarter until September 25, 2002, and that he did not file his TWCC-52 for the fourth quarter until December 16, 2002. Since there was no other evidence presented, and no discussion or argument concerning the issue of relief from liability due to the late filing of the TWCC-52s, the hearing officer entered findings and conclusions which flowed from the stipulated facts and the application of Section 408.143(c) to those facts. The claimant has not explained why he believes that the hearing officer erred in finding that the carrier was relieved of liability for the stated periods, nor has the claimant asserted that he should not be bound by the stipulation made at the CCH. The evidence in the record sufficiently supports the hearing officer's determinations that the carrier is relieved of liability for the stated periods.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute was whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the third and fourth quarters. The qualifying periods for the third and fourth quarters ran from May 31 through November 28, 2002. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

While the claimant listed 62 job searches during the qualifying period for the third quarter and another 22 job contacts during the qualifying period for the fourth quarter, the hearing officer found that the claimant did not have a well-structured job search plan during either quarter, and that he did not make a good faith effort to obtain employment commensurate with his ability to work. In addition, the claimant did not document that he had made job searches every week during the fourth quarter qualifying period. The issues in dispute presented questions of fact for the hearing officer to resolve based on the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer was not persuaded that the claimant's efforts amounted to a good faith effort to obtain employment commensurate with the claimant's ability to work. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Extent of injury is also a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain, *supra*. Applying this standard of review, we are satisfied that the evidence in this case sufficiently supports the hearing officer's determination that the compensable injury sustained by the claimant does not extend to include an injury to the left wrist.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

_____
Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge